

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

3 UNITED STATES OF AMERICA

4 v. 12 Cr. 938 (SHS)

5 XIA PING WEN, Conference  
6 Defendant.

7 -----x

8 New York, N.Y.  
9 January 3, 2013  
3:15 p.m.

10 Before:

11 HON. SIDNEY H. STEIN District Judge  
12

13 APPEARANCES

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15 PREET BHARARA  
United States Attorney for the  
Southern District of New York  
16 ROBERT BOONE  
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18 PETER L. QUAN  
Attorney for Defendant  
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20 BRENDA CHEN  
Interpreter (Mandarin)  
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1 (Case called)

2 THE CLERK: Counsel, please state your names for the  
3 record.

4 MR. BOONE: Good afternoon, your Honor. Robert Boone  
5 for the government.

6 MR. QUAN: Good afternoon, your Honor. Peter L. Quan  
7 for Ms. Wen.

8 THE COURT: Good afternoon. Ms. Wen is here as well.  
9 Please swear the interpreter in.

10 (Interpreter sworn)

11 THE CLERK: Please state your full name and spell your  
12 last name for the record.

13 THE INTERPRETER: Brenda Chen, C-H-E-N.

14 THE COURT: Good afternoon.

15 Mr. Boone, I take it, perhaps I shouldn't, but let me  
16 assume, based on another case that we just had, that discovery  
17 in this case consists of tapes and asylum applications. Am I  
18 correct in that?

19 MR. BOONE: That's correct, your Honor.

20 THE COURT: When do you want to produce the discovery?

21 MR. BOONE: January 31st we should be able to produce  
22 all discovery to defendant.

23 THE COURT: Mr. Quan, how long do you want to review  
24 that discovery and then make any motions or to come into the  
25 court and say there are no motions that you wish to make?

1 MR. QUAN: Three weeks, your Honor.

2 THE COURT: All right. Let's set the last date for  
3 government discovery January 31. We'll have a pretrial  
4 conference on February 21st at 4 p.m. Mr. Quan, please on that  
5 day have filed any motions. I'll look at them at the pretrial  
6 conference and set responsive dates, dates for the government  
7 to respond or, for that matter, a date for a fact hearing if  
8 the motion calls for a fact hearing. And if there are no  
9 motions, you will tell me that at that date and we'll set a  
10 trial date. Does that make sense?

11 MR. QUAN: Yes, your Honor.

12 THE COURT: Fine. February 21 at 4 p.m. will be our  
13 pretrial conference. You will file any motions that you have  
14 then.

15 Government, anything else?

16 MR. BOONE: Yes, your Honor. I would ask that the  
17 time be excluded under the Speedy Trial Act from today's date  
18 until the next pretrial conference, January 21st, to give the  
19 government an opportunity to produce discovery and the  
20 defendant an opportunity to review discovery, and respond to  
21 any motions they choose to respond with.

22 THE COURT: Mr. Quan, what is the position of the  
23 defense on the government request?

24 MR. QUAN: No objection.

25 THE COURT: Thank you, sir. The government, having

1 moved for an exclusion of time and Mr. Quan on behalf of Ms.  
2 Wen stating he has no objection, I do hereby exclude time from  
3 calculation under the Speedy Trial Act from today until  
4 February 21 with the finding that the ends of justice outweigh  
5 the interests of the public and Ms. Wen in a speedy trial.

6 The exclusion is made pursuant to 18 United States  
7 Code 3161(h)(7)(A), and the purpose is to allow the government  
8 to forward its discovery obligations to the defense, that is,  
9 to turn over the discovery mandated by the Federal Rules of  
10 Criminal Procedure, and for the defense to have adequate time  
11 to review it and to formulate any motions it wishes to make.

12 I'll see everybody then on February 21st. The  
13 exclusion of time is from today until February 21st.

14 Anything else, government?

15 MR. BOONE: Not from the government, your Honor.

16 THE COURT: Anything else, defense?

17 MR. QUAN: Your Honor, unfortunately, Ms. Wen cannot  
18 afford to retain a private lawyer like me. She has filled out  
19 a financial affidavit. I wonder if you can review it.

20 THE COURT: All right, hand it up.

21 MR. QUAN: May I approach?

22 THE COURT: Yes, of course. Thank you.

23 Please swear the defendant in.

24 (Defendant sworn)

25 THE CLERK: Please state your full name and spell your

1 last name for the record.

2 THE DEFENDANT: Wendy Xia Ping Wen, W-E-N-D-Y, X-I-A,  
3 P-I-N-G, W-E-N.

4 THE COURT: Ms. Wen, I have in front of me a financial  
5 affidavit CJA-23 form that Mr. Quan, your attorney, gave to me.  
6 Did you fill this out?

7 THE DEFENDANT: Yes.

8 THE COURT: Is this your signature on the bottom?

9 THE DEFENDANT: Yes.

10 THE COURT: Is everything you put forth here true and  
11 complete and accurate?

12 THE DEFENDANT: To my best knowledge.

13 THE COURT: Yes. I take it that you are seeking to  
14 have an attorney appointed to represent you who will do so at  
15 no charge to you pursuant to the Criminal Justice Act. Is that  
16 correct?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Given the information that's on this  
19 financial affidavit form, I'm going to approve your request. I  
20 will approve the financial affidavit form and I will appoint  
21 the CJA attorney on duty today.

22 THE DEFENDANT: Thank you, your Honor.

23 THE COURT: I have approved it. I'm appointing the  
24 CJA attorney on duty today to represent you. That attorney is  
25 Michael Schachter, S-C-H-A-C-H-T-E-R. His telephone number is

1 212-728-8102. He is somewhere in the courthouse because he is  
2 the CJA attorney on duty today. When my deputy called, he was  
3 not available in I take it the arraignment court, although I'm  
4 not exactly sure where she called. In any event, he does not  
5 yet know that I have appointed him.

6 Mr. Quan, what I'm going to ask you to do is to make  
7 sure that Mr. Schachter knows that I have appointed him to  
8 represent Ms. Wen, and I'm going to ask you to turn over your  
9 file in this matter to Mr. Schachter.

10 MR. QUAN: Yes, your Honor, I will.

11 THE COURT: Mr. Boone, please make contact with Mr.  
12 Schachter as well. Let him know you are the Assistant U.S.  
13 Attorney on the case.

14 MR. BOONE: Yes, your Honor.

15 THE COURT: If Mr. Schachter does not contact you, Ms.  
16 Wen, within the next day or two, phone his number. Mr. Quan  
17 will give you Mr. Schachter's telephone number. Call it and  
18 let him know who you are. 212-728-8102.

19 MR. QUAN: Your Honor, is there also a fax number or  
20 mailing address?

21 THE COURT: I don't know. You can talk to my deputy.  
22 She will give you whatever information there is on him.

23 I am appointing Mr. Schachter and I am relieving Mr.  
24 Quan of representing Ms. Wen.

25 MR. QUAN: Thank you, your Honor.

1 THE COURT: Anything else, defense?

2 MR. QUAN: No, your Honor.

3 THE COURT: Government?

4 MR. BOONE: No, your Honor.

5 THE COURT: Ms. Wen, did you understand what I have  
6 done? I have appointed Mr. Schachter to represent you.

7 THE DEFENDANT: Yes.

8 THE COURT: He now will represent you going forward.

9 THE DEFENDANT: Yes.

10 THE COURT: I'll see everybody on February 21st.

11 Thank you.

12 (Adjourned)

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